IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20630 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURSANGJI KUBERJI THAKORE & 3 - Petitioners
Versus
EXECUTIVE ENGINEER (SANAND) & 3 - Respondents

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Appearance :
MR.SUBHASH G BAROT for Petitioners
NOTICE SERVED for Respondent(s) : 1 - 2, 4,
MR. KRUNAL D PANDYA, A.G.P. for Respondents : 1 to 3 & 5,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 31/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Leave to amend the cause-title is granted. The State of Gujarat, through the Secretary, Revenue Department, Gandhinagar, is permitted to be impleaded as respondent No.5 in the petition.

2. Rule. Mr.K.D.Pandya, learned Assistant Government Pleader, waives service of notice on behalf of the respondent Nos.1 to 3 & 5. The endorsement on the board indicates that the respondent No.4 is duly served with the notice, but, has neither appeared in person, nor through his lawyer, nor has filed any reply controverting the averments made in the petition . Therefore, this Court is of the opinion that it is not necessary for the petitioner to effect service of notice of rule upon the respondent NO.4. Having regard to the facts of the case, the petition is taken up for final disposal today.

3. By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other

appropriate writ or order directing the respondents to make payment of compensation to the petitioners for acquiring their land bearing Survey No.850/4, which was situated at village Adraj, Taluka : Kadi, District : Mehsana, at the rate finalised by the High Court in First Appeal No.4319 of 2001 with interest.

4. The petitioners are residents of village Adraj, Taluka : Kadi, District : Mehsana. They were owners of the land bearing Survey No.850/4 situated at village Adraj. A proposal was received by the State Government to acquire certain survey numbers of village Adraj for the public purpose of construction of Narmada-Sanand Branch Canal under Sardar Sarovar Narmada Nigam Limited. The said proposal also included Survey No.850/4 belonging to the petitioners. On perusal of the said proposal, the State Government was satisfied that the lands of village Adraj mentioned in the proposal were likely to be needed for the said public purpose. Therefore,

notification under Section 4(1) of the Land Acquisition Act, 1894 ["the Act" for short] was issued, which was published in the Official Gazette on October 14, 1992. The owners, whose lands were proposed to be acquired, were served with notices under Section 4(1) of the Act. Though notices were duly served, no objections were filed by the interested persons against the proposed acquisition. The Special Land Acquisition Officer submitted his report as required under Section 5A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Adraj including the land of the petitioner, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Narmada-Sanand Branch Canal under Sardar Sarovar Narmada Nigam Limited. Therefore, a declaration under Section 6 of the Act was made, which was published in the Government Gazette on March 11, 1993. The interested persons

were thereafter served with notices under Section 9 of the Act for determination of amount of compensation payable to them. The Special Land Acquisition Officer, after considering the materials placed before him, made award under Section 11(1) of the Act on March 20, 1995, a copy of which is produced by the petitioners at Annexure-C to the petition. Though on running Page 7 of the Award a reference was made to Survey No.850/4 of village Adraj, which was belonging to the petitioners, no award was made determining compensation for acquiring the said survey number. According to the petitioners, one of their family members i.e. Thakore Dulaji, whose Survey Nos.847-849/3, were also acquired, was paid compensation, but, the petitioners were not paid compensation, though possession of their land was taken over for construction of Narmada-Sanand Branch Canal under Sardar Sarovar Narmada Nigam Limited. The petitioners have averred that against the award of the Special Land Acquisition Officer, references were sought and the Reference

Court awarded additional amount of compensation to the claimants at the rate of Rs. 28/- per sq.mt. for their acquired lands. According to the petitioners, feeling aggrieved by the award of the Reference Court, the Special Land Acquisition Officer had preferred First Appeal Nos. 4319 to 4372 of 2001; whereas the claimants had filed Cross-Objections No.74 to 127 of 2001, and the High Court by judgment dated October 11, 2001 held that the claimants were entitled to compensation at the rate of Rs.30/- per sq.mt. The grievance of the petitioners is that in spite of having addressed a letter dated November 29, 2004, the respondents have failed to pay compensation to them, though their land is acquired.Under the circumstances, the petitioners have filed the instant petition and claimed relief to which reference is made earlier.

5. On service of notice, Mr.Ratubhai Bhemabhai Chaudhari, Special Land Acquisition Officer, has filed reply to the petition. In

Paragraph 7 of the reply, it is stated that the land bearing Survey No.850/4 was used for canal in public interest, but, compensation for acquiring the said land was not paid due to non-inclusion of the said survey number in the Award which was made under Section 11 of the Act. In Paragraph 8 of the reply, it is admitted that because of *bona fide* and genuine mistake while making award under Section 11 of the Act, no compensation payable to the owners of Survey No.850/4 was determined. In Paragraph 11 of the reply, the respondent No.3 has stated that the procedure contemplated by Sections 4, 6, 9 & 11 of the Act, in consultation with other authorities, will have to be followed, which is likely to consume some time and, therefore, appropriate time be granted to enable the respondent No.3 to make payment of compensation payable to the petitioners.

6. This Court has heard Mr.Subhash G.Barot, learned counsel for the petitioners, and

Mr.K.D.Pandya, learned Assistant Government Pleader, for the respondent Nos.1 to 3 & 5. This Court has also taken into consideration the documents forming part of the petition. From the record of the case, it is evident that no award under Section 11 of the Act was made with reference to Survey No.850/4 of village Adraj, Taluka : Kadi, District : Mehsana within a period of two years from the date of declaration under Section 6 of the Act and, therefore, in terms of Section 11A of the Act, the entire proceedings for acquisition of the said land will have to be treated as having lapsed. In **R.L.Jain (D) by LRs v. D.D.A. and others, AIR 2004 SC 1904**, it is held that in a case where the land owner is dispossessed of his land prior to the issuance of preliminary notification under Section 4(1) of the Act, the Government merely takes possession of the land, but, the title thereof would continue to vest with the land owner and, therefore, the land owner would be entitled to get rent or damages for use and occupation for

the period the Government retains possession of the property. As the land acquisition proceedings relating to Survey No.850/4 belonging to the petitioners are treated as having lapsed, it would be obligatory for the concerned respondent to issue appropriate notification under Section 4(1) of the Act and make payment of compensation on the basis of market value of the land as on the date of publication of notification under Section 4(1) of the Act. On the instructions of Mr.R.B.Chaudhary, Incharge Special Land Acquisition Officer, Narmada Yojna, Unit-18, Mehsana, who is personally present in the Court, Mr.K.D.Pandya, learned Assistant Government Pleader, states at the Bar that notification under Section 4(1) of the Act would be issued on or before March 15, 2007, which would be published in the Official Gazette on or before April 15, 2007; whereas declaration under Section 6 of the Act would be made on or before May 15, 2007 and notice under Section 9 of the Act would be issued to the petitioners on or before June

30, 2007 for determination of compensation payable to them. It is further stated by Mr.K.D.Pandya, learned A.G.P. for the respondent Nos.1 to 3 & 5 that the award under Section 11 of the Act would be made on or before July 31, 2007 and the amount of compensation including damages found payable, shall be paid to the petitioners within two months from the date of making of the award. In view of the statements made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that the petition will have to be allowed in part.

7. For the foregoing reasons, the petition partly succeeds. The respondent No.5 is directed to issue notification under Section 4(1) of the Act in respect of Survey No.850/4 of village Adraj, Taluka : Kadi, District : Mehsana on or before March 15, 2007. The said respondent is also directed to publish the notification under Section 4(1) of the Act in the Official Gazette on or before April 15, 2007. The respondent No.5

is further directed to publish declaration under section 6 of the Act relating to the said land in the Official Gazette on or before May 15, 2007. The Special Land Acquisition Officer i.e. respondent No.3 is directed to issue notice under Section 9 of the Act to the petitioners for determination of compensation payable to them on or before June 30, 2007. While determining the amount of compensation payable to the petitioners, the respondent No.3 shall also determine the damages payable to the petitioners for use and occupation of their land from the date of taking over possession of the same by the Government till the date of publication of notification to be issued under Section 4(1) of the Act in the Official Gazette. The respondent No.3 is also directed to determine the amount of compensation relating to land of Survey No.850/4 belonging to the petitioners on the basis of the market value prevailing on the date of publication of fresh notification to be issued under Section 4(1) of the Act. The respondent

No.3 is directed to make the award under Section 11 of the Act on or before July 31, 2007 and pay the amount of compensation and damages to the petitioners within two months from the date of the award. Rule is made absolute to the extent indicated hereinabove subject to above referred to directions. There shall be no orders as to costs. D.S. permitted.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)